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PTOL-90A (Rev. 04/07)

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

Application Number: 09/652,168
Filing Date: August 31, 2000
Appellant(s): HUCKINS, JEFFREY L.

AUG 1 0 2007

Technology Center 2100

Jeffrey L. Huckins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/13/2006 appealing from the Office action mailed

12/28/2005.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,236,983	Hofmann et al.	05-2001
6,009,274	Fletcher et al.	12-1999
5,260,778	Kauffman et al.	11-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 45 and 51 are rejected under 35 U.S.C. 102, and claims 46-50 and 52-55 are

rejected under 35 U.S.C. 103. This rejection is set forth in the previous Office Action below

mailed on 12/28/2005.

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 45 and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Hofmann et

al. [US Patent No 6,236,983].

3.   As per claim 45, Hofmann discloses the invention substantially as claimed including a

method comprising:

assigning a different address to each of at least two agents on a client system of a

multicast system [i.e. activate particular or appropriate discovery agents and each discovery

agent includes a unique associated identifier] [Abstract; col 3, lines 60-col 4, lines 17; and col

9, lines 15-18];

determining whether a message sent to a plurality of client systems of the multicast

system and received by said client is addressed to one of said at least two agents [i.e. determine

which agent to activate] [Abstract; col 6, lines 23-26; and col 8, lines 9-14 and lines 26-39].

4.   As per claim 51, it is apparatus claimed of claim 1, it is rejected for similar reasons as

stated above in claim 45.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

6.   Claims 46-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hofmann et

al. [US Patent No 6,236,983], in view of Fletcher et al. [US Patent No 6,009,274].

7.   As per claim 46, Hofmann does not specifically disclose sending at least two different

types of messages at said client system including a software update message and a short message

service message. Fletcher discloses sending at least two different types of messages at said client

system including a software update message and a short message service message [i.e. software

update and keep alive message] [col 5, lines 26-52; and col 8, lines 34-54]. It would have been

obvious to a person skill in the art at the time the invention was made to combine the teaching of

Hofmann and Fletcher because Fletcher's teaching of different types of messages would allow to

identify messages and to provide multiple services in a distributed environment.

8.   As per claim 47, Fletcher discloses sending messages including software and messages

not including software [i.e. update files and keep alive message] [col 8, lines 34-67].

9.   As per claim 48, Fletcher discloses assigning different addresses to message to a client

that include software and messages that do not include software [col 1, lines 66-col 2, lines 35]

10.   As per claim 49, Fletcher discloses addressing messages including software to an agent

on the client that is adapted to handle the downloading of software [Abstract; and col 3, lines

40-44].

11.   Claims 50, 52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Hofmann et al. [US Patent No 6,236,983], in view of Kauffman et al. [US Patent No 5,260,778

].

12.   As per claim 50, Hofmann does not specifically disclose determining whether a message

is sent to a first client system of the multicast system or a subset of the plurality of client systems

based upon an individual identifier of the first client system and a group identifier of the subset

of the plurality of client systems. Kauffman discloses determining whether a message is sent to a

first client system of the multicast system or a subset of the plurality of client systems based

upon an individual identifier of the first client system and a group identifier of the subset of the

plurality of client systems [i.e. group and subgroup identifiers for the message and determine

whether the message is intended to be processed by the subscriber terminal] [Abstract; and col

5, lines 28-47]. It would have been obvious to a person skill in the art at the time the invention

was made to combine the teaching of Hofmann and Kauffman because Kauffman's teaching of

group and subset of client and identifiers would allow to provide for the distribution of specific

messages to individual subscribers or special groups of subscribers via a CATV communication

network, such messages include the service of emergency alert information, reminder message,

paging message, etc... [Kauffman, col 1, lines 41-51].

13.   As per claim 52, Kauffman discloses a service acquisition module to receive a broadcast

data stream and provide a program identifier to a tuner of the processor-based device, and to

extract the message and to provide the message to a unidirectional message module of the

processor-based device [i.e. CATV converter] [Figure 2; and col 4, lines 66-col 5, lines 47].

14.   As per claim 53, it is rejected for similar reasons as stated above in claim 45.

15.   As per claim 54, it is rejected for similar reasons as stated above in claim 49.

16.   As per claim 55, it is rejected for similar reasons as stated above in claim 50.

(10) Response to Argument

I.   Claims 45 and 51 are in fact unpatentable under 35 U.S.C. §102(e) over Hofmann

(Appeal Brief, pages 12-14).

A.   As per claim 45, Appellant argues (1), "Hofmann fails to teach assigning of

different addresses to at least two agents on a client system", and Examiner respectfully

disagrees as noted in the previous Office Actions mailed on 12/28/2005 and 03/27/2006.

As to point (1), the question is, broadly and reasonably interpreted, does the

Hofmann reference disclose "assigning of different addresses to at least two agents on a client

system", and Examiner finds that it clearly does. Specifically, Hofmann reference discloses a

system for collecting information regarding a device or a user of a device, the system of

Hofmann includes server and client, and within each client, the information is received from

plurality of discovery agents [Abstract, 14A-D, Figure 1; and col 3, lines 60-col 4, lines 17]. As

defined by the Merriam-Webster's Collegiate Dictionary, address is to identify (as a peripheral or memory location) by an address or a name for information transfer. In this case, Hofmann discloses a client 10 has plurality of discovery agents, and each includes a unique associated identifier or name [i.e. being the only one or sole or different from one another] [10, 14A-D, Figure 1; Abstract; col 5, lines 54-56; and col 11, lines 15-16], and the discovery agents collect information about the client for the server [col 4, lines 1-17]. Therefore, the prior art clearly teaches "different addresses to at least two agents on a client", and as such renders Appellant's claim language as written, unpatentable over the prior art of record.

B.   As per claim 45, Appellant argues (2), "Hofmann fails to teach a client system that is of a multicast system", and Examiner respectfully disagrees as noted in the previous Office Actions mailed on 12/28/2005 and 03/27/2006.

As to point (2), the question is, broadly and reasonably interpreted, does the Hofmann reference disclose "a client system that is of a multicast system", and Examiner finds that it does. Specifically, Hofmann discloses a server 12 is coupled to multiple clients 10 [col 5, lines 26-35], and server is capable of distributing discovery agents and discovery rules to one or more clients [col 5, lines 16-19 and lines 38-40]. As defined by the Merriam-Webster's Collegiate Dictionary, multicasting is the process of sending a message simultaneously to more than one destination on a network. In this case, Hofmann discloses multiple clients may be coupled to server through a network [col 5, lines 5-11 and lines 26-30], and the server stores various discovery agents and discovery rules for transmission to one or more clients, which are then activated or executed by the discovery engines contained in the client [i.e. transmission to more than one destination or client or multicasting] [col 5, lines 16-19]. Therefore, the prior

art clearly teaches "multicasting system", and as such renders Appellant's claim language as written, unpatentable over the prior art of record.

C.   As per claim 45, Appellant argues (3), "Hofmann fails to teach determining whether a message sent to multiple client systems of a multicast system and received by the client system is addressed to an agent of the system", and Examiner respectfully disagrees as noted in the previous Office Actions mailed on 12/28/2005 and 03/27/2006.

As to point (3), the question is, broadly and reasonably interpreted, does the Hofmann reference disclose "determining whether a message sent to multiple client systems of a multicast system and received by the client system is addressed to an agent of the system", and Examiner finds that it does. Specifically, Hofmann discloses the server transmits various discovery agents and discovery rules to one or more client as mentioned above in point (2). Furthermore, Hofmann discloses the discovery engine of the client is responsible for determining what data is required by a particular discovery rule and activating the appropriate discovery agents to collect the required data [i.e. determining whether a message sent to multiple client systems of a multicast system and received by the client system is addressed to an agent of the system] [col 3, lines 17-20; col 6, lines 23-26; and col 8, lines 11-14]. Thus, the prior art clearly teaches "determining whether a message sent to multiple client systems of a multicast system and received by the client system is addressed to an agent of the system", and as such renders Appellant's claim language as written, unpatentable over the prior art of record.

D.   As per claim 51, Appellant argues (4), "Hofmann nowhere teaches a processor-based device that is a client system of a multicast network", and Examiner respectfully disagrees as noted in the previous Office Actions mailed on 12/28/2005 and 03/27/2006.

As to point (4), the question is, broadly and reasonably interpreted, does the Hofmann reference disclose "a processor-based device that is a client system of a multicast network", and Examiner finds that it does. Specifically, as mentioned in point (2) above, Hofmann discloses the server transmits various discovery agents and discovery rules to one or more client. Furthermore, Hofmann discloses a computer system that can use as a client and/or a server wherein a computer system includes a processor 102 for performing the processing tasks required by the computer [i.e. a processor-based device that is a client system] [Figure 7; and col 10, lines 3-17]. Therefore, the prior art clearly teaches "a processor-based device that is a client system of a multicast network", and as such renders Appellant's claim language as written, unpatentable over the prior art of record.

II.   Claims 46-49 are in fact unpatentable under 35 U.S.C. §103(a) over Hofmann and Fletcher (Appeal Brief, pages 14-16).

A.   As per claim 46, Appellant argues that neither reference teaches or suggests receiving at least two different types of messages, one of which including a short message service message.

So the question is, broadly and reasonably interpreted, does the Fletcher reference disclose, "receiving at least two different types of message at said client system including a software update message and a short message service message", and Examiner finds that it does. Specifically, Fletcher discloses a method and apparatus for automatically updating software components in one or more agents (end systems) in a network [Figure 1; Abstract; and col 5,

lines 6-17], in which the system of Fletcher includes an automatic software updating (ASU)

server for sending out a multicast advertisement or announced the available of software

component to all agents in its domain [i.e. a software update message] [col 7, lines 1-7; and col

10, lines 33-51]. In addition, Fletcher discloses when a system software component of the end-

system is updated by the ASU agent, a message is displayed to the user to this effect, the

message is customizable on a per component basis by the administrator from the ASU manager [

i.e. a short message service message] [col 13, lines 36-39]. Therefore, the prior art clearly

teaches "a software update message and a short message service message", and as such renders

Appellant's claim language as written, unpatentable over the prior art of record.

B.   Appellant argues that no suggestion or motivation existed for the combination of

Hofmann and Fletcher, and Examiner respectfully disagrees.

        The examiner recognizes that obviousness can only be established by combining

or modifying the teachings of the prior art to produce the claimed invention where there is some

teaching, suggestion, or motivation to do so found either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071,

5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.

1992). In this case, though Hofmann discloses updating of discovery agents and discovery rules

can be accomplished by downloading agents or rules from a server [col 3, lines 34-47].

Hofmann does not specifically disclose a software update message and a short message service

message. Fletcher discloses an automatic software updating (ASU) server for sending out a

multicast advertisement or announced the available of software component to all agents in its

domain [i.e. a software update message] [col 7, lines 1-7; and col 10, lines 33-51] and when a

system software component of the end-system is updated by the ASU agent, a message is

displayed to the user to this effect, the message is customizable on a per component basis by the

administrator from the ASU manager [i.e. a short message service message] [col 13, lines 36-

39], wherein it would have been obvious to a person skill in the art at the time the invention was

made to combine the teaching of Hofmann and Fletcher because Fletcher's teaching of server

sending out a multicast advertisement to all agents would provide an automatically updating and

distributing executable files and components via a network in a distributed fashion [col 1, lines

12-16]. Thus, a prima facie case for obviousness has been properly made, and as such, the

rejection should be affirmed.

C.   As per claim 48, Appellant argues that neither reference teaches or suggests

receiving different addresses with messages that include software and messages that do not

include software.

So the question is, broadly and reasonably interpreted, does the Fletcher reference

disclose, "receiving different addresses with messages that include software and messages that

do not include software", and Examiner finds that it does. Specifically, Fletcher discloses a

method steps for the server sends out a multicast advertisement to all agents in its domain [i.e.

messages that do not include software], once all responses have been received from the agents,

the server sends out files in a point-to-point manner to each agent requesting that file [i.e.

messages that includes software] [col 10, lines 33-51; and col 11, lines 67-col 12, lines 18].

Therefore, the prior art clearly teaches the claimed limitation of claim 48, and as such renders

Appellant's claim language as written, unpatentable over the prior art of record.

D.   As per claim 49, Appellant argues that neither reference teaches or suggests

determining if a message is directed to a given agent of a client system based upon a service

identifier associated with the agent.

So the question is, broadly and reasonably interpreted, does the Fletcher reference

disclose, "determining if a message is directed to a given agent of a client system based upon a

service identifier associated with the agent", and Examiner finds that it does. Specifically,

Fletcher discloses the agents respond to a server request, which indicates one or more software

components available from the server, the server stores the agent responses in a server database

and updates the agents according to the information provided in the agent responses, the server

may generate a table indicating which agents need which software components, when it is time

to update the agents, the server accesses the table and sends out files to the agents [i.e.

determining if a message is directed to a given agent of a client system based upon a service

identifier associated with the agent] [306, Figure 5; col 5, lines 26-44; and col 12, lines 40-45].

Therefore, the prior art clearly teaches the claimed limitation of claim 48, and as such renders

Appellant's claim language as written, unpatentable over the prior art of record.

III.   Claims 50 and 52-55 are in fact unpatentable under 35 U.S.C. §103(a) over Hofmann and

Kauffman (Appeal Brief, pages 16-18).

A.   As per claim 50, Appellant argues that the examiner has engaged again in

hindsight rationale in order to combine Hofmann and Kaufman, and Kaufman is from a non-

analogous art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that Kaufman is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Hofmann is directed to a computer system and more particularly to a client/server architecture, Kauffman is directed to a cable television which includes a headend [i.e. server] for distributing channel signal to subscribers or group of subscribers [i.e. clients], in that regard, it is in fact related to the claimed invention, and thus, the rejection should be affirmed.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.

1992). In this case, Hofmann discloses the server stored various discovery agents and discovery

rules for transmission to one or more clients [col 5, lines 16-19]. Hofmann does not specifically

disclose determining whether a message is sent to a first client system of the multicast system or

a subset of the plurality of client systems based upon an individual identifier of the first client

system and a group identifier of the subset of the plurality of client system. Kaufman

specifically discloses the message data transmitted by addressable controller and received by

addressable data receiver contains message information as well as tag data containing group and

subgroup identifiers for the message (distribution data) and the microprocessor interprets the

distribution data to determine whether the message is intended to be processed by the subscriber

terminal [col 5, lines 28-47], wherein it would have been obvious to a person skill in the art at

the time the invention was made to incorporate the teaching of Kauffman into the system of

Hofmann because Kauffman's teaching of group and subgroup identifier would provide for the

distribution of specific message to individual subscribers or special groups of subscribers such as

dissemination of subscriber invoices, paging messages, emergency alert information, group

specific or targeted advertising, reminder messages, event scheduling massages, program guides,

general interest information, and other types of text and/or graphics messages [Kauffman, col 1,

lines 41-50]. Thus, a prima facie case for obviousness has been properly made, and as such, the

rejection should be affirmed.

B.   As per claim 52, Appellant argues that neither reference teaches or suggests

providing of a program identifier to a tuner.

So the question is, broadly and reasonably interpreted, does the Kauffman

reference disclose, "provide a program identifier to a tuner", and Examiner finds that it does.

Specifically, Kauffman discloses a cable television network distributes services provided by

various programmers such as HBO and other premium programming providers, such services are

transmitted over the CATV distribution media for distribution to subscriber [col 3, lines 25-34]

and at the remote location, a subscriber terminal (converter) which enables a subscriber to tune to

a particular channel to receive a desired service for display on television set [i.e. provide a

program identifier to a tuner] [Figure 2; col 3, lines 34-42; and col 5, lines 2-12]. Therefore, the

prior art clearly teaches "a program identifier to a tuner", and as such renders Appellant's claim

language as written, unpatentable over the prior art of record.

C.   As per claim 53, it is in fact unpatentable under 35 U.S.C. §103(a) over Hofmann

and Kauffman for the same reasons as mentioned above in claims 45 and 52, and as such, the

rejection should be affirmed.

D.   As per claim 54, it is in fact unpatentable under 35 U.S.C. §103(a) over Hofmann

and Fletcher for the same reasons as mentioned above in claim 45 and 49, and as such, the

rejection should be affirmed.

E.   As per claim 55, it is in fact unpatentable under 35 U.S.C. §103(a) over Hofmann

and Kauffman for the same reasons as mentioned above in claims 50 and 51, and as such, the

rejection should be affirmed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Note: The Information Disclosure Statement (IDS), filed on 05/11/2006, had been considered and enter on 07/31/2007.

Respectfully submitted,

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